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May 17, 2012

## VIA E-MAIL

James Hammes Cramer, Multhauf & Hammes, LLP 1601 East Racine Avenue, Suite 200 Waukesha, WI 53187-0558

Re: In Re: The Petition to Incorporate as a Metropolitan Village, Unincorporated Land Located in the Town of Brookfield and Town of Waukesha, Waukesha County,

Wisconsin

Case No.: 11-CV-4071

## Dear Attorney Hammes:

The Town of Waukesha (alternatively "Town") has reviewed your letter, dated May 2, 2012, discussing the stipulation that was entered into by the Town of Brookfield, City of Brookfield, City of Waukesha and Village of Sussex. That stipulation provides the framework for the mediation that those parties have scheduled for May 30th.

Your May 2nd letter invites the Town of Waukesha to participate in the mediation "provided the Town of Waukesha accepts the conditions and limitations of the mediation process" as required by the stipulation. Because of the reasons set forth below, the Town of Waukesha will not participate in the upcoming mediation.

The stipulation was drafted by you and finalized without input from the Town of Waukesha. Pursuant to your May 2nd letter, the Town of Waukesha may participate in the mediation only if it agrees to be bound by unfavorable terms within the stipulation that it had no hand whatsoever in drafting—that is an untenable condition.

The stipulation's focus on the incorporation standards in Wisconsin Statutes section 66.0207 ties the hands of the mediation participants opposing the petition to incorporate, and thus curtails the expansive and creative exchanges that may be needed to reach a negotiated agreement that could satisfy the participants. According to the stipulation and your May 2nd letter, all mediation participants opposed to incorporation must provide their objections "based on the standard to be applied by the Board," and then give solutions to those objections. Under the stipulation you drafted on behalf of the petitioners and Town of Brookfield, the objections to incorporation must be narrowly focused on how the incorporation petition falls short of the statutory standards. Thus, the "proposed solutions which would satisfy the objection[s]" would

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have to be similarly narrow, only addressing how the petition could overcome objections in order to meet the statutory standards. That narrow framework established by the stipulation excludes the presentation of an obvious solution—withdraw the petition to incorporate. Additionally, the stipulated framework for the mediation has no requirement that the Town of Brookfield identify solutions, such as, for example, a solution that excludes Town of Waukesha territory from the petition to incorporate.

The date of the mediation was established by the Town of Brookfield, City of Brookfield, City of Waukesha and Village of Sussex, and written into the stipulation without any input from the Town of Waukesha. Consequently, the mediation is scheduled to occur on a date the Town's litigation counsel for this case is unavailable.

The Town of Waukesha continues to strongly oppose the unwanted inclusion of approximately 280 acres in its jurisdiction in the petition to incorporate. This strong-armed move by the Town of Brookfield is especially hard to accept because the Town of Brookfield has not articulated a compelling reason why it supports the incorporation petition. The Town of Waukesha intimately understands the problem many towns face trying to plan and budget when cities can and do annex town territory, taking with it tax base, residents and amenities. The Town of Brookfield's boundaries, however, show remarkable stability over the past decades. Further, the Town of Brookfield does not need to incorporate to obtain Tax Incremental Financing ("TIF") authority. Recent special legislation has provided the Town of Brookfield authority to establish a TIF district with retail and office uses—authority usually reserved for cities and villages, and given to no other town in Wisconsin.

By including Town of Waukesha residents and territory in the incorporation petition, the petitioners and Town of Brookfield forced the Town of Waukesha to become involved in this incorporation dispute. This is the Town of Brookfield, City of Brookfield and City of Waukesha's third time fighting over a petition to incorporate Town of Brookfield lands. This time the fight spilled into the Town of Waukesha's backyard forcing us to intervene because Town of Waukesha residents do not want to be part of the proposed village. But at its core, this is an intergovernmental dispute that the Town of Brookfield, City of Brookfield and City of Waukesha should resolve without taking territory from the Town of Waukesha, and the Town of Waukesha wishes them well in doing so during the upcoming mediation.

Sincerely,

Robert Zeinemann

Special Counsel for the Town of Waukesha

cc: Stan Riffle (via e-mail)
Julie Gay (via e-mail)
Karen Flaherty (via e-mail)
Erich Schmidtke (via e-mail)
Mark Herman (via e-mail)